The Solicitors' Journal

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CURRENT TOPICS

Two Judges

IT is sad to hear of the death of judges and magistrates, even when they lived, as Judge WHITMORE LIONEL RICHARDS and Mr. KENNETH MCLEAN MARSHALL did, to the ripe ages of eighty-five and eighty, respectively. Both died on 21st November in their homes. Judge Richards had retired in 1942, having been on the Bench twenty years, and Mr. Marshall had retired in 1944, having been a metropolitan police magistrate for twenty-two years. Both were educated at Rugby, but Judge Richards went to Trinity College, Dublin, and Mr. Marshall went to Trinity College, Cambridge. Judge Richards was the son of the county court judge and chairman of quarter sessions for County Mayo and a grandson of a Baron of the Irish Court of Exchequer. He practised at the Chancery Bar and was a joint editor of Godefroi's Law of Trusts. Both he and Mr. Kenneth Marshall were renowned for the humanity and kindliness with which they administered the law.

Derequisitioning

DEREQUISITIONING, ten years after the war, is a sore topic with small property owners, for, as the MINISTER OF HOUSING AND LOCAL GOVERNMENT said last week, there are still 64,000 dwellings under requisition in England and Wales. The number has been reduced by only one-quarter since early in 1952, when the process of substantially reducing it by stages was started. Now, it is announced, the Minister is to inquire into means of speeding up the process. The Government contribution to the cost of the exercise by local authorities of their delegated powers, which exceeds receipts in rent by £6,400,000 per annum, is little in comparison with the cost in hardship, sacrifice and much-needed returns from their small properties of house owners, who naturally feel that they have been singled out for discriminatory taxation. The owner desirous of residing in his own requisitioned house should be put on the same footing as if the occupier were his own tenant, and the onus should be upon the occupier to show that greater hardship would be caused by making an order for possession. Requisitioning was introduced as an emergency measure, and its survival years after the emergency is bound to cause anomalies and injustices.

Air Pollution

A POLICY which would involve cost and sacrifice, but which could reduce smoke in populous areas by four-fifths in ten to fifteen years, is recommended in the final report of the Committee on Air Pollution, published on 25th November. The committee, whose interim report was published in December, 1953, estimate the cost of air pollution at £250,000,000 a year, apart from waste of fuel. The main recommendations are: (1) Subject to certain limited exceptions, the emission of dark smoke from any chimney should be prohibited by law. Penalties for smoke offences should be increased. (2) Local authorities should have power under general legislation by means of orders requiring confirmation by the appropriate Ministers to establish—(i) *Smokeless Zones*, in which the emission of any smoke from chimneys would be prohibited; and (ii) *Smoke Control Areas*, larger in size, in

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which the use of bituminous coal for household purposes would be restricted and industrial smoke reduced to a practicable minimum. (3) House owners should be substantially helped by the Exchequer and local authorities in paying for the conversion of appliances in smokeless zones and smoke control areas. Domestic heating appliances installed in all new premises should be of approved types, and purchase tax on gas and electric room and water heaters, at present 50 per cent., should be removed. (4) All reasonably practicable steps should be taken to prevent the emission of grit and dust from industrial installations fired by solid fuel.

Driving Licence Law

FOR once again focussing attention on a grave defect in the law on driving licences the South Staffordshire Stipendiary Magistrate deserves public gratitude. Sitting at Wolverhampton on 27th November, he said: "Should it not be compulsory for a driver or motor cyclist to take a test within a reasonable period of being issued with his provisional licence? If a driver or motor cyclist fails twice to pass a test, should he not be prohibited for a period from driving at all on the road? If a driver or motor cyclist fails three or more tests, is it not questionable whether he will ever be a reasonably safe driver and, if so, should it not be considered whether or not he ought to be refused a provisional licence altogether? Should not the requirements with regard to displaying 'L' plates and carrying a competent driver be made compulsory for all who have not passed a test or who do not hold a full licence?" He understood that amendments to the Road Traffic Act were likely to be made. They might deal with this matter. "Incredible as it may seem," he continued, "it is perfectly legal as the law stands for a person to take out one provisional driving licence after another over a period of months and even years without ever attempting to take a test to ensure that he is competent to drive. Within the Midland area alone there have been numerous cases and, indeed, they are steadily increasing in number, of provisional licence holders driving untested for years. We have known cases of six, twelve, fourteen, sixteen and eighteen provisional licences being taken out in succession, sometimes without any attempt being made to take a test, sometimes after repeated failure to pass a test." As the judges sometimes say when the issue is equally obvious, we agree and have nothing to add.

Solicitors' Privilege

THE useful and attractive contents of the *Cambridge Law Journal* for November include a note of immediate interest to solicitors by Mr. R. B. COOKE on *Inland Revenue Commissioners* v. *West-Walker* [1954] N.Z.L.R. 191, a case in the New Zealand courts which raised the question of a solicitor's common-law privilege protecting him from disclosing communications between himself and his client. Under a revenue Act requiring any person to furnish information in writing or produce books or documents relating to purposes necessary for enforcement of the Act if he had such information or books or documents, a solicitor had been required to furnish any information he had with regard to the financial position of his client, a taxpayer. With one dissentient, a court of five judges held that the solicitor was justified in refusing, as he did, to provide the information. The writer contrasted the statement of DENNING, L.J., in *Birch* v. *Wigan Corporation* [1953] 1 Q.B. 136, 142, that the reasonable interpretation of a statute should be preferred to the literal where there is a fair choice, with the Lord Chancellor's criticism of that doctrine in the *Magor and St. Mellons* case [1952] A.C. 189 as "a naked usurpation of the legislative function under the thin disguise of interpretation." Nevertheless he found it a matter of satisfaction, as we all do, that "freedom to obtain unhindered the judgment of the ordinary courts or the advice of a legal practitioner has . . . a claim to especially jealous safeguard by the common law."

Retirement

THE Ministry of Pensions and National Insurance published a report on 26th November on the choice before men and women of either retiring or continuing to work on reaching the minimum retirement age (sixty-five for men and sixty for women). The inquiry covered mainly persons eligible for insurance pensions who reached the minimum age of sixty-five during one month of 1953, but did not include the higher professional and salaried classes or the self-employed, who are not eligible for pensions until 1958. Nevertheless, the results are not without their lesson for those who will be faced at the later date with the choice to work or not to work. About 26,000 persons were interviewed. Only women insured on their own account were included and the significance of their records is limited. Among six men in every ten who stay at work after reaching the minimum retirement age, the main reason given was financial need (45 per cent.), feeling fit to work (25 per cent.) and preferring to work (20 per cent.). Nearly half of those staying on said that the prospect of extra leisure put them against giving up work, and only one-third of those giving up work confessed to being attracted by the extra leisure. From this inquiry it would appear that most people like their jobs at least well enough not to want to quit them, and probably would not have enough activities which they prefer to fill up the gap left by their daily work. It would also appear that financial need is a big incentive to work, even at sixty-five. Both these incentives apply with even greater force to professional people, whose work is varied and interesting and is what they have chosen to do, and whose financial position if they stop working is, to say the least, parlous.

"The Guiding Hand"

FOR thirty-nine years St. Dunstan's has rehabilitated, trained, settled and looked after for the rest of their lives several thousand war-blinded men and women from two world wars. The St. Dunstan's annual report, just published, entitled "The Guiding Hand," reveals that there are to-day a total of 2,600 St. Dunstaners still living—1,500 from the first world war and 1,100 from the second—and with their wives and families and those of men since died, St. Dunstan's has looked after the needs of some 10,000 persons. Last year fifty-four new cases were admitted to St. Dunstan's benefits, including twenty-seven men from World War II (many of whom have been in hospital for years receiving treatment) and more recent casualties in Korea, Malaya and East Africa in the campaign against Mau Mau terrorists. Most of these men are now in full training and will soon be doing a useful and remunerative job again in the life of the community, but for the older men—St. Dunstan's received twenty-seven cases from World War I during the last year alone—it is pointed out that the task of rehabilitation is more difficult and training generally impossible. Many of the older men —some 550 of them, in fact—continue to produce beautiful work in their own homes and there are more than 120 chartered physiotherapists, 270 factory workers who are engaged on assembly and inspection jobs and operating capstan lathes and the like, while others have been settled in their own shops and as poultry farmers, horticulturists and market gardeners. Others have become successful lawyers, as well as journalists, welfare officers, parsons and chartered accountants.

Company Law and Practice

PUBLIC AND PRIVATE COMPANIES

SECTION 20 (1) (ii) of the Larceny Act, 1916 (which provides that: "Every person who . . . being a director, member or officer of any body corporate or public company, fraudulently takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company . . . shall be guilty of a misdemeanour . . . "), has now joined s. 5 of the Apportionment Act, 1870, as one of those sections in Acts, other than the Companies Acts, where the expression "public company" also includes those companies which, provided they comply with the provisions of s. 28 of the Companies Act, 1948, are, for the purposes of that Act, called private companies (*R.* v. *Davies* [1954] 3 W.L.R. 664; *ante*, p. 789).

In delivering the judgment of the Court of Criminal Appeal in *R.* v. *Davies*, Lord Goddard, C.J., said (at p. 667): "Any company incorporated under the provisions of the Companies Act is a public company for this purpose" (i.e, for the purpose of the Larceny Act, 1916), "although there may be species of public companies, that is to say, companies incorporated under the Companies Acts, which rank as private companies and have certain rights and privileges."

THE COMPANIES ACT, 1948

R. v. *Davies* serves as a useful reminder that the term "public company" is nowhere defined, or to be found, in the Companies Act, 1948. Section 455 defines a company as meaning "a company formed and registered under this Act or an existing company." The same section also includes definitions of "company limited by guarantee," "company limited by shares," "company within the stannaries," "exempt private company," "existing company," "holding company," "private company," "subsidiary" and "unlimited company." Apart from s. 455, there are also definitions to be found of "banking and discount company" (Sched. VIII), "oversea company" (s. 406), "unregistered company" (s. 398) and "wholly owned subsidiary" (s. 195). There is no definition of a public company, the distinction usually made in the Act being between those companies which are private companies and those which are not private companies. See, for example, s. 1 (Mode of formation), s. 31 (Members' liability for debts where business carried on with fewer than legal minimum) and s. 185 (Retirement of directors under age limit).

As the Lord Chief Justice observed in *R.* v. *Davies*, the expression "public company" in s. 20 of the Larceny Act, 1916, is used to distinguish those companies incorporated under the Companies Acts from those corporate bodies not so incorporated; for example, a chartered company, a statutory company or a body corporate at common law.

PRIVATE COMPANIES

In connection with the Companies Act, 1948, the term "public company" is a convenient and conventional way of describing a company which is not a private company. However, the expression is not a term of art.

For the purposes of the Companies Act, 1948, the difference between a private company and one which is not a private company is that the former must include in its articles the three provisions laid down by s. 28 of the Act. The company must, by its articles—

(*a*) Restrict the right to transfer its shares. (This may be done in very general terms: see Table A, Pt. II, cl. 3.)

(*b*) Limit the number of its members to fifty. (Excluding present or past employees who became members during employment. Joint holders count as a single member.)

(*c*) Prohibit any invitation to the public to subscribe for its shares or debentures.

Whether or not a company is a private company is solely a matter of whether or not the restrictions are in the articles. If the three restrictions are in the articles it is a private company: if they are not in the articles the company is not a private company. From this it would seem to follow that even if, in fact, the company conforms to the three requirements but does not include the restrictive provisions in its articles it is not a private company, whereas, if a company does include the three restrictions but, in fact, disregards them through inadvertence or otherwise, it remains a private company although it will lose certain of its privileges. This is recognised by s. 29, which says that in these circumstances the company shall cease to be entitled to the privileges and exemptions conferred on private companies under s. 31 (Members' liability for debts where business carried on with fewer than legal minimum), s. 129 (1) (Exempt private companies), s. 222 (*d*) (Winding up by the court where membership below seven) and s. 224 (1), proviso (*a*) (i) (Reduction of membership below seven to found application for winding up by a contributory).

The consequences of non-compliance with the restrictive provisions are loss of privileges, the provisions of the Act applying as if the company were not a private company. The company does not, however, cease to be a private company. Indeed, from the maxim *expressio unius est exclusio alterius*, it would seem to follow that the company retains certain of its privileges, e.g., it need have only one director.

The question of when a company ceases to be a private company is dealt with by s. 30, which enacts that if a company, being a private company, alters its articles in such manner that they no longer include the three restrictions imposed by s. 28, the company shall, as on the date of alteration, cease to be a private company. It must then within fourteen days issue a prospectus or file a statement in lieu.

CLAUSES IN PRIVATE DOCUMENTS

It would be dangerous to assume that because the term "public company" has been construed to mean a company incorporated under the Companies Act, 1948, for the purposes of certain Acts of Parliament, it will also be construed in this way when it appears in a private document. Quite apart from the general principle that questions of construction must be decided on the individual document, it is possible to conceive cases where the term "public company" would be held to mean only those companies registered under the Companies Act, 1948, which are not private companies for the purposes of that Act. An apposite case is an investment clause in a settlement or will.

Such authority as there is on the point seems to fall under two heads, neither of which should be regarded as conclusive.

1. *Transferability of shares*

As Byles, J., said in *Nicholls* v. *Rosewarne* (1859), 6 C.B. (N.S.) 493, "the words 'public company' import no doubt some relation to the public; but the decisions leave it doubtful what that relation should be. It may mean a company in which the shares are open to all the public."

Subject to the restriction in the articles, the shares of a private company are open, in theory, to all the public; in practice this is not always the case.

2. *Publicity of constitution*

In *Macintyre* v. *Connell* (1851), 61 E.R. 87, a company not incorporated by charter but having all the attributes of publicity, such as returning the names and addresses of its members and of the officer to sue and be sued on behalf of the company, was held to be a public company for the purposes of the Judgments Act, 1838. Publicity of constitution was one of the reasons for the decision in *R.* v. *Davies* (at p. 668), where it is said: "It is a company registered under a public Act, of which particulars have to be filed." These two cases deal with public Acts of Parliament; the same considerations would not necessarily apply in construing a private document.

In the Larceny Act, 1916, s. 20 confers protection upon companies from fraudulent conversion by their directors and, for this purpose, "private companies require just the same protection as any other sort of trading company, for directors of private companies very often fail to distinguish between their own property and the property of the company" (*per* Lord Goddard, C.J., in *R.* v. *Davies*, at p. 667). Lord Goddard also said (*ibid.*): "It is true that the Larceny Act is a penal statute, but the cases show that the section is intended to deal with bodies corporate and public companies as contrasted with anything in the nature of a partnership or unincorporated association."

In the case of an investment clause, rather different considerations apply. Trustees may have occasion to raise capital and, in such circumstances, the restriction in the articles of a private company may present a formidable obstacle. The trustees not only have to find a buyer, but a buyer acceptable to the directors as a member. Further, many private companies extend the restriction on transfer of shares beyond the bare provisions of Table A, Pt. II, cl. 3, and require outgoing members first to offer their shares to the remaining members at a price to be fixed by some prescribed method or formula.

It was not until the enactment of s. 37 of the Companies Act, 1907, that it became necessary for a private company to incorporate restrictions in its articles. For this reason decisions prior to that date must be approached with caution. Thus, although it was held in *Re Castlehow* [1903] 1 Ch. 352 that the expression "public company" in an investment clause in the will of a person domiciled in the United Kingdom generally means a company in the United Kingdom, the point at issue was whether the clause included foreign companies, not whether the expression "public company" included private companies.

Prior to 1907 the term "private company" was generally understood to mean companies which did not invite the public to subscribe for their shares. If a company did invite public subscription it was considered to be a public company. Thus, in *Re Sharp; Rickett* v. *Sharp* (1890), 45 Ch. D. 286, where an investment clause permitted investment in the securities of any "railway or other public company," three points were considered: (*a*) incorporation by public statute, (*b*) publicity of constitution, and (*c*) the fact that the shares were transferable to the public; and it was held that, as these three points were satisfied by a company registered under the Companies Acts, it was a public company for the purpose of that investment clause.

There does not, however, appear to be any decision on an investment clause after 1907 where the expression "public company" has been construed as including a private company as now defined by s. 28 of the Companies Act, 1948 (possibly because a well-drawn investment clause uses the expression "company" without the adjective "public").

Conclusion

It is, therefore, considered that although the expression "public company" will, unless there are compelling reasons to the contrary, be held to mean any company incorporated under the Companies Acts for the purposes of public Acts of Parliament, and other documents of a public nature, nevertheless, it would be dangerous to assume that in private documents the expression would necessarily be so construed. The term "public company," although not used in the Companies Act, 1948, has a popular, conventional and generally accepted meaning in the commercial world. In private transactions ranging from commercial documents to settlements and wills it might well be used to show an intention to exclude those companies which fall within the definition of "private company" for the purposes of the Companies Act, 1948.

The meaning of the expression "public company," wherever it appears, must remain a question of construing the document as a whole, and ascertaining the intention of the parties therefrom, but it is suggested that when construing a private document the consideration of the transferability of shares should be accorded equal, or even greater, weight than that of publicity of constitution.

H. N. B.

A Conveyancer's Diary

ARREARS OF ANNUITIES

In his well-known judgment in *Re Coller's Deed Trusts* [1939] Ch. 277, Sir Mark Romer, L.J., examined the circumstances in which an annuitant is entitled to have arrears of the annuity satisfied out of the capital or the future income of the fund and the principles of construction to which the court has recourse when this difficult question is referred to it for solution. After mentioning the case where the annuity is a charge on capital, and where arrears in any year can be raised out of capital, the learned lord justice came to the case of a trust to pay an annuity out of the income of a fund without any subsequent indication that the annuity is in any event to be paid in full and without any express words confining the annuity for any one year to the income of that year. Under such a trust the annuity is *prima facie* a continuing charge upon the income of the fund, and the annuitant or his personal representative is entitled to have the income impounded until all arrears of the annuity are paid, unless the annuitant's right is limited in some way. An example of a right to have future income impounded to satisfy arrears of an annuity for a limited period only is the case where a trust is expressed to take effect at the expiration of the limited period (e.g., on the death of the annuitant) in terms that show that the whole trust fund, both capital and future income, is at that moment to go to some other person intact. But in the absence of any such indication the right to have the income as it arises applied in satisfaction of the arrears continues until the arrears are satisfied.

If, then, it is once established that an annuity has been created in such terms as to constitute a continuing charge on the income of a fund, great care has to be exercised in

dealing with any surplus income which may be received after the annuity (and any then existing arrears) has been satisfied. The rights of an annuitant in this respect were defined by Romer, L.J., in the judgment already referred to in the following manner: Where any property is charged with payment of an annuity the annuitant is entitled to demand and can, by taking the appropriate steps, ensure that every part of that property is made available for payment of the annuity, and the right of the annuitant must prevail whatever may be the nature of the property that is charged. Where, therefore, the property charged is the income of a fund, the annuitant is in strictness entitled to require that the surplus income in any year, after keeping down the current instalments of the annuity and any existing arrears, shall within the limits permissible by law be accumulated for the purpose of meeting subsequent instalments of the annuity.

But if these are the strict rights of any annuitant whose annuity is charged on property, in practice it would appear that these rights are somewhat less. In the concluding part of his judgment in *Re Coller's Deed Trusts* Romer, L.J., said that "in practice and as a matter of administration" the distribution of the corpus or the income of a fund charged with an annuity is never held up altogether in cases where the annuitant cannot be prejudiced by a partial distribution, and he referred to authority which in his view justified the general conclusion that where an annuity is charged upon income that in all human probability will always be sufficient to pay it, the trustees will be justified in paying the surplus income in each year to the persons entitled to the income upon which the annuity is charged.

It is not easy to reconcile what in the view of the Court of Appeal (for Romer, L.J.'s judgment in *Re Coller's Deed Trusts* was that of the court) are the strict rights of an annuitant whose annuity is charged on the income of a fund over the future income of the fund with the administrative licence which trustees appear to enjoy, as a practical matter, to override those rights. In the recent case of *Re Cameron* [1954] 1 W.L.R. 1375, and p. 788, *ante*, Roxburgh, J., attempted a reconciliation based on grounds of practical convenience and nothing else: the strict rule, if given unfettered play, would produce such ridiculous results that it becomes necessary to invoke the idea that if the trustees pay over some part of the income to some other beneficiary without the consent of the annuitant, "technically they have committed a breach of trust, but it is a breach of trust which is justified." The learned judge went on to say that if that is the reconciliation between the rule and the practice in this kind of case, it made no great appeal to him, but he knew of no other.

The actual decision in *Re Cameron* was one of construction of a particular will and is of no general interest, but in the course of his judgment Roxburgh, J., said that, having regard to the extraordinary incidence of a continuing charge in the case of an annuity, one would be slow to find a continuing charge except in a very clear case: the learned judge did not relish a situation in which the law says that a man has an equitable right but he would be so unreasonable in enforcing it that the court would never assist him. There were sufficient indications in the will in this case to make it possible to decide that the annuity which the testator had thereby given to his widow did not constitute a continuing charge on the residuary estate. But the language of the will was very special here, and where there is simply a direction to pay an annuity out of the income of a trust fund, and subject as aforesaid the fund is given, both as to capital and income, to another person, or disposed of on certain other trusts, *prima facie* the annuity constitutes a continuing charge on the income of the fund, with all the consequences which that involves (see *Re Coller's Deed Trusts*, *supra*, at p. 281). This is a very simple form of disposition, and one frequently adopted. To avoid putting trustees into the almost impossible position which, on the authorities as they now stand, such a disposition must involve, some further directions as to their liability in the event of a strictly premature distribution of surplus income must be added. A suitable form for such a direction is to be found in The Conveyancer's Year Book, 1940, at the end of the article which deals with the decision in *Re Coller's Deed Trusts*. It runs as follows: "The annuities hereinbefore bequeathed or directed to be paid out of the annual income of the trust fund shall be a continuing charge on the said income and on the capital of the trust fund: Provided that any trustees may in their absolute discretion from time to time distribute freed from the said charge any surplus income remaining after paying all instalments of the said annuity down to the date of such distribution." This is a form for use in a will, but it can easily be adapted for use in an *inter vivos* settlement.

A reader has referred to the articles on the discharge or modification of restrictive covenants which appeared in this Diary in September last (pp. 605, 616 and 629, *ante*), and has pointed out that I did not deal there with the position of a requisitioning authority in relation to restrictions affecting requisitioned premises. In this correspondent's experience, authorities in possession of requisitioned property quite outrageously flout certain obligations, and the question is raised whether they enjoy some specific exemption under the Defence Regulations.

Unfortunately—from the point of view of adjoining owners and occupiers whose property is often very seriously affected by what would otherwise be the unauthorised use to which requisitioned property can be put—this is so. The regulation which authorises the competent authority to take possession of land (which is the language used to describe the process commonly referred to as requisitioning) is reg. 51 of the Defence (General) Regulations, 1939, and para. (2) thereof provides that where any land is in the possession of a competent authority by virtue of, *inter alia*, this regulation, the land may, notwithstanding any restriction imposed on the use thereof (whether by any Act, or other instrument, or otherwise), be used by or under the authority of the competent authority for such purpose and in such manner as that authority thinks expedient, for any of the purposes specified in s. 1 (1) of the Supplies and Services (Transitional Powers) Act, 1945. These latter purposes were extended by the Supplies and Services (Extended Purposes) Act, 1947, and are now of the widest character: they are certainly sufficient to authorise the kind of use to which requisitioned property is most frequently put in *prima facie* infraction of restrictive covenants, e.g., the use for multiple occupation of a house subject to a covenant that it shall be used as a single private house only.

"A B C"

Mr. Henry Counsell, solicitor, of Bristol and Weston-super-Mare, was married on 19th November to Dr. Pamela Westhead, of Bristol.

Mr. Charles Denis Gregory, solicitor, of Bromley, Kent, was married on 25th November to Miss Pamela Mary Clarkson, of Sutton.

Landlord and Tenant Notebook

CHANGE IN BALANCE OF HARDSHIP

CLAIMS to recover possession of controlled premises are often difficult to advise on because, as has been pointed out, it is the court rather than the landlord that is fettered by the Rent, etc., Restrictions Acts (*Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.)); the common-law right to possession is not destroyed, but the remedy is taken away or restricted (*ibid.*). And this means that the circumstances on which a landlord relies have to be considered by the court as they exist when it hears the case; a landlord may commence an action "on the ground of" nuisance, discover the day before the hearing that suitable alternative accommodation is available, and shift his ground accordingly.

It was, however, generally thought that, although the circumstance that the Acts operated via jurisdiction entitled a party to take points on appeal which he had omitted to mention at first instance, the decision of a county court could not be reversed by an appellate court merely because circumstances had changed during the period that had elapsed between the two hearings.

King v. *Taylor* [1954] 3 W.L.R. 669 (C.A.); *ante*, p. 786, has shown that this view requires modification. *Dicta* explaining *Goldthorpe* v. *Bain* [1952] 2 Q.B. 455 (C.A.) call for a distinction to be drawn between cases in which the court of first instance makes, and cases in which it refuses to make, an order for possession.

Goldthorpe v. *Bain* was of the former variety. A county court judge granted an order for possession on the ground of what is popularly called "greater hardship": I am sorry to see that the headnote so puts it, ignoring the fact that the ground is that the dwelling-house is reasonably required, etc., while a proviso introduces the factor of greater hardship *and* the onus is then on the tenant. The plaintiff had satisfied him that she did reasonably require the house as a residence for herself and her family and he decided a greater hardship issue in her favour. He made a "long order," and before it became effective the plaintiff died, leaving the house to her daughter. The tenant then applied for an extension of time, which application the judge dismissed as misconceived because no one had then applied for leave (under the County Court Rules, Ord. 25, r. 6: change by death, etc., after judgment) to issue process. Thereupon the daughter brought a fresh action for possession "under the order . . . and also on the ground that she required the premises for her own use." I confess I do not quite see how the order could be made a ground for possession, the provisions of the Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1) and Sched. I, not covering such an event. However, the judge having decided the balance of hardship issue in the defendant's favour this time, the question of the continued validity of the order was argued, and it was held that such an order was "personal." It was on this point that the plaintiff appealed.

Order 25 of the County Court Rules, 1936, is a lengthy instrument dealing with the enforcement of judgments and orders, and r. 6 (1) (*a*) provides for issuing process on change of parties after judgment or order, by death, assignment or otherwise. The claimant applies for leave by affidavit and has to satisfy the court that he is "entitled" to issue the process: questions of law as well as questions of fact are thus contemplated, and an action may be ordered. The county court judge had based his decision on the "nature" of the order, the benefit of which, he considered, could not descend to personal representatives or beneficiaries under a will; emphasising his reasoning by reference to common sense. The Court of Appeal appears to have rather agreed about the common-sense position, but found it impossible to accept the conclusion that such an order ceased on death. There might, Somervell, L.J., observed, be a certain want of logic about that; but there must be finality at some stage: suppose a successful landlord died after getting possession but before moving in? Jenkins, L.J., seems to have been influenced more by the consideration that the county court judge's reasoning would apply, in his view, necessarily to other judgments for possession, e.g., on the ground of rent default. One might have thought that distinction would not be difficult and that the "what's done cannot be undone" reasoning was preferable.

This decision came to be referred to in *King* v. *Taylor* in the following way: there had been a change of circumstances, not between date of judgment and date for possession, but between date of judgment and hearing of appeal. The plaintiff had been defeated by the balance of hardship proviso in the court below, where his case was that he and his wife, both aged, were living at Shrewsbury; both were in poor health; they wanted their house, which was near Mitcham, so that a daughter who lived in London could visit them more frequently. Before the appeal came to be heard the plaintiff's wife died, and it seems to have been suggested that this event called for a debit in the plaintiff's hardship account. At all events, it was the appellant who, after trying to impugn the judge's findings, sought to rely on *Goldthorpe* v. *Bain* as authority for the proposition that disappearance of hardship did not affect the position, for the circumstances had to be considered as they stood at the time of the hearing at first instance.

The Court of Appeal dismissed the appeal without having to consider this point, but Evershed, M.R., and Romer, L.J., made some useful observations on the proposition. *Goldthorpe* v. *Bain*, it was pointed out, did not go so far: it was a case in which an order had been made, not refused. That this should make all the difference may, at first sight, seem another instance of illogicality; but that it conforms with the statutory provisions was demonstrated by Evershed, M.R., who recalled that the fetter on the jurisdiction is imposed (now by the Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1)) in these terms: "No order or judgment for the recovery of possession of any dwelling-house to which, etc. . . . shall be made or given unless . . ." The "court," the learned Master of the Rolls said, meant "the court which is being asked to make the order," and this would include the Court of Appeal when it is being asked to make the order for possession. As to logic, I would suggest that there is no violation in this respect when one considers the difference between scrambling and unscrambling eggs.

It is, however, not easy to say how any such change in the balance of hardship is to be proved before a court which does not hear witnesses; and, while the death of the wife of the plaintiff was not disputed in *King* v. *Taylor*, it does not appear to have been generally agreed what effect it would have on the balance in that case. Evershed, M.R.'s judgment concludes with a passage in which he suggested that the plaintiff might like to consider the effect and then bring another action. Also, that the defendant might by his continued remissness in looking for alternative accommodation, on which great emphasis had been laid as a hardship factor, worsen his position in the meantime.

The tenant's slackness in the matter of looking for another house had been introduced on the strength of the proviso to Sched. I (*h*) to the 1933 Act: "Provided that an order . . . shall not be made . . . if the court is satisfied that having regard to all the circumstances of the case, *including the question whether* other accommodation is available for the landlord or the tenant . . . greater hardship would be caused by granting the order . . . than by refusing to grant it." While it is a well-known popular fallacy that the effect of the Rent Acts is that the landlord has to find the tenant a place to go to if he wants possession, it seems arguable whether a tenant's failure to go house-hunting—which could undoubtedly go to an issue of reasonableness once a ground is established—can constitute hardship caused by refusing the order.

R. B.

HERE AND THERE

NO COMPARISONS

WE must not, of course, be insular; we must not be narrow-minded. We must realise that it takes all sorts to make a world and all sorts (including atomic scientists) to unmake it. We must not seek in other people and other nations mere reflections of ourselves and be disgruntled when we don't find them so. We must not bolster up our self-esteem with odiously self-approving comparisons. Thus, if (as a Frenchman once put it) attending a murder trial in England is like going to a religious service and in France like going to the theatre, we must try to tell ourselves that the respective jurists are grasping different ends of the same stick, and that the dramatic end has its merits. So, too, when we hear of the death of a notable foreign jurist who has divided his life between politics and the law we must not too precipitately set about assessing him in terms (shall we say?) of the late Viscount Simon or the first Earl of Birkenhead. Such a contemporary has just died. He graduated at his university in jurisprudence in 1913. Political considerations interfered with his candidature for a professorship in criminal law and he had to content himself with subordinate teaching employment. It was eight years before a reorientation of public affairs brought him simultaneously academic recognition and emergence into the public life of the courts as Attorney-General of one of the federal States of his country. In 1928 he was appointed President of the Supreme Court. In 1931 he returned to a State appointment as Public Prosecutor and also deputy Minister of Justice. Then from 1933 onwards he once more held a federal post, first as deputy Public Prosecutor and subsequently as Public Prosecutor. To his duties he devoted himself with the most remarkable vigour, nevertheless finding time to act as director of the Institute of Law in the Academy of Sciences and editor of the foremost legal journal and also to publish several works which establish him as the highest modern legal authority of his nation. From 1940 onwards, he emerged into the wider sphere of foreign policy and diplomacy and finally he died abroad in his country's service.

DIFFERENT IDIOM

AT that level and expressed in those terms, the career of the late Andrei Vishinsky had much the flavour of the life-story of any aspiring and successful lawyer-politician in England from Victorian times onwards. But one cannot quite leave the picture there. Something's missing, and that something is altogether outside our current island experience. For an Attorney-General or Director of Public Prosecutions in this country to be able to record that he had effectively co-operated in the capital conviction of some five thousand fellow citizens on charges of treasonable conspiracy would (in what some other nations might regard as our sentimental British tenderness for human life) be felt to overshadow most of the other episodes in his career, rather as the brief episode of the Bloody Assizes is felt to overshadow the rest of the career of Lord Jeffreys of Wem. We now know that there was a good deal more to be said for Lord Jeffreys than is generally said, and it may be that Andrei Vishinsky was performing a duty painful to himself when he prosecuted to death the once distinguished revolutionaries who, in going into opposition in the new State, had, according to the story of the prosecution, failed to abandon the old techniques. He struck many outside the Soviet Union as possessing both geniality and charm. It may be that he also had initially as much distaste for the taking of human life as Robespierre, who in his early pre-revolutionary days in legal practice is said to have declined a judicial appointment which would have obliged him to pass sentences of death on convicted persons. If this was so, Vishinsky, as prosecuting counsel, did not allow his feelings to interfere with the force of his advocacy which, in a convention not our own, employed such epithets as "mad dog," "son of a bull and a pig," "despicable rotten dregs of humanity." It may be that they lose something of their essential quality in translation and that what in English sounds like vulgar abuse had in the original all the dignity of powerful invective. It may be so, for fairly recently in diplomatic exchanges the former prosecutor called into service such expressions as "cannibals," "bare-footed vagabonds" and "rotten decayed soldiery." His style on these occasions was curiously reminiscent of that of Mr. Attorney-General Coke in the prosecution of Sir Walter Raleigh. It is interesting to recall that at the Nuremberg trials he emphasised to Allied officials that Russia had only agreed to participate in them on the understanding that the leading Nazis were executed. When Judge Jackson, the American prosecutor, dissented, Vishinsky remarked: "If we don't execute them, why bother to have the trials?" Again the conception is the old sixteenth-century view of a State trial as a demonstration rather than an inquiry.

THEORETIC TRANSITION

THE emergence of Vishinsky as the supreme master of Soviet legal theory marked the movement away from the old Bolshevik belief that all law was founded on injustice and that it would eventually wither away in a classless, just society. This doctrine had been expounded by the jurists of the School of Pashukanis. It was modified by Vishinsky, who taught that only bourgeois law was founded on injustice. By contrast, Soviet law, under the Soviet judicial system of which he has been called the father, was the perfect instrument of justice, and the State which wielded it must be fortified and strengthened, so that it should provide every aspect of life. The transition was completed with the Stalin Constitution of 1936. Vishinsky assisted at its formulation and translated it into terms of legal practice. While Stalin is remembered, he too will be remembered.

RICHARD ROE.

His Royal Highness the DUKE OF EDINBURGH has accepted his election as a Master of the Bench of the Inner Temple. Other Masters elected are: Mr. J. V. NAISBY, Q.C., Mr. JOHN PENNYCUICK, Q.C., and Sir HARRY HYLTON-FOSTER, Q.C., M.P., Solicitor-General. Lord Justice BIRKETT has been elected Reader for the Lent Vacation and LORD OAKSEY Treasurer for 1955.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

AUSTRALIA: INTER-STATE TRANSPORT: LICENSING PROVISIONS: CONSTITUTIONALLY INVALID

Hughes and Vale Pty., Ltd. *v.* State of New South Wales and Others

Lord Oaksey, Lord Morton of Henryton, Lord Reid, Lord Tucker and Lord Cohen

17th November, 1954

This appeal, from a majority judgment of the High Court of Australia dated 16th April, 1953, by Hughes and Vale Proprietary, Ltd., who carried on business as motor carriers of general merchandise between Sydney, in the State of New South Wales, and Brisbane, in the State of Queensland, arose out of proceedings brought by the appellant claiming, in effect, a declaration that the licensing provisions of the State Transport (Co-ordination) Act, 1931–51, of New South Wales were inapplicable to them while operating their vehicles in the course of and for the purposes of inter-State trade, or to the vehicles while so operated. Under the relevant provisions of the Act the licence might be granted or refused by an official of the Executive in his uncontrolled discretion, and the question in this appeal was whether those provisions contravened s. 92 of the Constitution of Australia, which provided that " trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free."

LORD MORTON OF HENRYTON, delivering the judgment, said that the question whether the Transport Act contravened s. 92 was considered in 1933 in *R.* v. *Vizzard* (1934), 50 C.L.R. 30, when by a majority it was held that it did not, and that case had been followed since in a number of cases, including *McCarter* v. *Brodie* (1950), 80 C.L.R. 432. The reasoning of the Board in *Commonwealth of Australia* v. *Bank of New South Wales* [1950] A.C. 235 could not be reconciled with the reasoning of the majority in *Vizzard's* case, *supra*, and the decision in the latter case could not stand unless the provisions of the Transport Act could be justified as being " regulatory " legislation. In his dissenting judgment in *McCarter* v. *Brodie*, *supra*, Fullagar, J., said: " As to what is *not* regulatory in the relevant sense, one thing at least is clear. Prohibition is not regulatory. Lord Porter ([1950] A.C., at p. 309) after quoting from . . . *Australian National Airways Pty., Ltd.* v. *Commonwealth* (1945), 71 C.L.R. 29, at p. 61, said ' simple prohibition is not regulation '." Fullagar, J., also said that " if a legislative body cannot lawfully prohibit altogether, it cannot lawfully prohibit subject to an administrative discretion to exempt from the prohibition. It is quite true to say that regulation may involve partial prohibition, but it is quite untrue to say that total prohibition subject to discretionary exemption or ' licensing ' is merely partial prohibition within the meaning of that proposition." The argument before the Board turned chiefly on whether the Transport Act could be regarded as being " regulatory " and therefore valid within the principles laid down in the *New South Wales Bank* case, *supra*, and the respondent State of New South Wales laid great stress on the following passage in that case: " Every case must be judged on its own facts and in its own setting of time and circumstance, and it may be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation, and that inter-State trade, commerce and intercourse thus prohibited and thus monopolised remained absolutely free." Their lordships were not aware of any circumstances in the present case giving rise to the situation contemplated in that passage; no facts were proved which might have enabled the respondents to base an argument on it. On the specific question before them—whether or not the licensing provisions in the Transport Act contravened s. 92—their lordships were entirely in agreement with the view of the minority of the High Court, and with the " personal opinion " of the Chief Justice; they also adopted passages from the dissenting judgments of Dixon, J., and Fullagar, J., in *McCarter* v. *Brodie*, *supra*. Their lordships were asked to apply the maxim *stare decisis* and to refuse to disturb *Vizzard's* case, *supra*, but they thought that it would be quite wrong to take that course, as the present appeal offered an opportunity to set at rest the remarkable conflict of judicial opinion. In their view *Vizzard's* case had never been approved by the Board, and they must express their disagreement with the views of the majority in *Vizzard's* case. The appellant here was entitled to a declaration that the provisions of the Act requiring application to be made for a licence, and all provisions consequential thereon, were inapplicable to the appellant while operating its vehicles in the course of and for the purposes of inter-State trade, or to the vehicles while so operated. The appeal would be allowed. The respondents must pay the appellant's costs before the Board and in the High Court. There would be no order as to the costs of the interveners in the appeal (the Commonwealth of Australia and the States of Victoria and Queensland).

APPEARANCES: *Sir Garfield Barwick*, Q.C., *J. D. Holmes*, Q.C., and *G. D. Needham* (all of Australia) (*Farrer & Co.*); *M. F. Hardie*, Q.C. (Australia), *Frank Gahan*, Q.C., *Else Mitchell* (Australia) and *J. G. Le Quesne* (*Light & Fulton*); *P. D. Phillips*, Q.C., and *C. I. Menhennitt* (both of Australia) (*Coward, Chance & Co.*); *J. G. Le Quesne* (*Freshfields*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 824**

COURT OF APPEAL

DIVORCE: HUSBAND'S INDECENT ASSAULTS ON STEPDAUGHTER: CRUELTY TO WIFE

Ivens *v.* Ivens

Lord Goddard, C.J., Hodson, L.J., and Vaisey, J.

26th October, 1954

Appeal from a commissioner.

A husband, respondent to divorce proceedings by his wife on the ground of cruelty, had committed indecent assaults on the wife's daughter by a previous marriage, a child between thirteen and fifteen years of age. The girl informed her mother, who protested to her husband concerning his conduct and he promised not to repeat it. He failed to keep his promise and resumed his indecent conduct, with the result that his wife's health was affected. Eventually the husband left the house and the wife presented her petition. The commissioner dismissed the petition on the ground that the alleged cruelty was not aimed at the wife. The wife appealed.

LORD GODDARD, C.J., said that the commissioner had probably had in mind *Daniell* v. *Daniell* (*The Times*, 2nd February, 1954), where a stepmother had unsuccessfully contended that her husband's chastisement of his own children, not shown to be unreasonable or brutal, was cruelty to her. The facts in the present case were wholly different. The present case fell exactly within the decision in *Cooper* v. *Cooper* (p. 822, *post*), where the Divisional Court held that an indecent assault by a father on his child might amount to cruelty to the mother, although no intent to injure her was shown. In the present case there could be nothing more likely to affect the wife's health or more calculated to justify the court in saying that the husband knew perfectly well what the effect of his conduct on the wife would be. *Daniell* v. *Daniell*, *supra*, was no authority on the present facts; a strong case of cruelty had been made out and the wife was entitled to a decree.

HODSON, L.J., and VAISEY, J., agreed. Appeal allowed.

APPEARANCES: (for the wife) *G. C. Tyndale*, Q.C., and *John Davies* (*Kinch & Richardson*, for *L. B. Fagor & Tillyard*, Cardiff).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 887**

AGRICULTURAL HOLDINGS ACT: LETTING FOR MOWING AND GRAZING FOR 364 DAYS

Reid *v.* Dawson

Denning, Morris and Parker, L.JJ. 3rd November, 1954

Appeal from Jones, J.

By s. 2 (1) of the Agricultural Holdings Act, 1948, where any land is let to a person as agricultural land for an interest less than a tenancy from year to year, and the circumstances are such that if his interest were a tenancy from year to year he would in respect of that land be the tenant of an agricultural holding, then the agreement shall take effect as if it were an

agreement for the letting of land for a tenancy from year to year; subject to the proviso that "this subsection shall not have effect in relation to an agreement for the letting of land or the granting of a licence to occupy land, made . . . in contemplation of the use of the land only for grazing or mowing during some specified period of the year." By an agreement made between the then owner of land and the defendant, the latter was granted the exclusive right to mow for hay and to depasture only sheep and cattle on three fields for a term of 364 days. At the end of that period she held over for another 364 days, and was then given notice to quit by the plaintiffs who had purchased the land. On the plaintiffs then claiming possession, the defendant claimed to have a yearly tenancy and to be entitled to the protection of s. 2 (1) as the tenant of an agricultural holding. Jones, J., gave judgment for the plaintiffs. The defendant appealed.

DENNING, L.J., said that when the agreement was made both parties knew that its purpose was to avoid the land being caught by the Act of 1948. The purpose of s. 2 (1) was to avoid the consequences of *Land Settlement Association, Ltd.* v. *Carr* [1944] K.B. 657, and the result was, subject to the proviso, that a letting or licence to occupy for less than a year set up a tenancy from year to year. The question for the court was whether the agreement was made in contemplation of the use of the land "during some specified period of the year." The defendant contended that that expression referred to some period which had some significance in agriculture, such as hay-making or summer or winter grazing. But that construction could not be put clearly into words, whereas the section itself was clear. The period of 364 days was a specified period, and the appeal should be dismissed.

MORRIS and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *C. Harvey*, Q.C., and *L. A. Blundell* (*Langhams and Letts*, for *Dawson & Hart*, Uckfield); *P. Ingress Bell*, Q.C., and *I. Warren* (*Bulcraig & Davis*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 810

NEGLIGENCE: SAFE SYSTEM OF WORK: DUTIES OF EMPLOYERS OF WINDOW-CLEANERS

Drummond *v.* British Building Cleaners, Ltd.

Denning, Morris and Parker, L.JJ. 8th November, 1954

Appeal from Pilcher, J. ([1954] 1 W.L.R. 501; *ante*, p. 197).

The plaintiff, an experienced and efficient window-cleaner employed by the defendants, was cleaning the outside of a first-floor sash window by standing on a sloping sill outside the window and holding on with one hand by a finger grip under the bottom of the top sash when his foot slipped, his finger hold was wrenched away, and he fell to the ground. The window and sill were of sound construction and in good condition. Above the top sash was a transom and above that a fanlight. Although the plaintiff had a safety belt none of the windows in the building had eye-bolts or hooks to which it could be attached. The plaintiff was not instructed to hitch the rope attached to his safety belt round the transom above the window nor to use a ladder provided by the defendants. He brought an action alleging negligence on the part of his employers and claiming damages in respect of his injuries. Pilcher, J., gave judgment for the defendants. The plaintiff appealed.

DENNING, L.J., said that the evidence, as in other cases, showed that the practice of standing on the sill was dangerous. In those circumstances the employers were under a duty to do all they could to reduce the risk, and should insist on the men taking precautions for their own safety; see the observations of Lord Reid in *General Cleaning Contractors, Ltd.* v. *Christmas* [1953] A.C. 180, at p. 194. It had been proved in evidence that in this particular building the men could have used their safety belts by putting the rope round a transom, and they should have been instructed to do this. That was a practicable way of obtaining security, subject only to the possible objection by the occupier. As the defendants had not inquired whether there would be any objection, it did not lie in their mouth to say that the occupier would have objected. They were guilty of negligence. If employers took all proper steps and gave all proper instructions, they had done all that they could; and if the men did not obey them, it was the men's own fault. The appeal should be allowed.

MORRIS and PARKER, L.JJ., agreed. Appeal allowed. Leave to appeal refused.

APPEARANCES: *R. M. Everett*, Q.C., and *J. Sofer* (*Matthew Morris*); *F. W. Beney*, Q.C., and *S. Chapman* (*J. F. Coules & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1434

NATIONAL HEALTH SERVICE: SUPERANNUATION: MINISTER'S DECISION FINAL

Healey *v.* Minister of Health

Denning, Morris and Parker, L.JJ.

10th November, 1954

Appeal from Cassels, J. ([1954] 3 W.L.R. 222; *ante*, p. 473).

The National Health Service Act, 1946, provides by s. 67 (1): "Regulations may provide (*a*) for the granting out of moneys provided by Parliament of superannuation benefits to officers of such classes as may be prescribed . . . (*i*) for the determination of all questions arising under the regulations by the Minister." By reg. 60 of the National Health Service (Superannuation) Regulations, 1950: "Any question arising under these regulations as to the rights of any officer . . . or of a person claiming to be treated as such . . . shall be determined by the Minister." The Minister determined, pursuant to reg. 60, that the plaintiff, a shoemaker employed by a hospital management committee in the shoemaker's shop of a mental hospital, was not a mental health officer within the meaning of the regulations. The plaintiff brought an action against the Minister for a declaration that he was a mental health officer within the meaning of the regulations. The Minister raised a plea in bar that by virtue of s. 67 (1) and reg. 60 his decision was final and not subject to review or appeal in the courts, which was upheld by Cassels, J. The plaintiff appealed.

DENNING, L.J., said that since *Barnard* v. *National Dock Labour Board* [1953] 2 Q.B. 18 it was clear law that the courts could grant declarations pronouncing on the validity or invalidity of the proceedings of statutory tribunals. In cases where there was good reason for thinking that the Minister had mistaken or misused his powers, the court would declare his determination to be invalid, but the present case was not of that kind. The declaration sought was not that the Minister's determination was invalid but that the plaintiff was a mental health officer. To grant such a declaration the court would have to hear the case and evidence afresh; and, even if the court did grant the declaration sought by the plaintiff, the Minister's decision would still stand unless he chose to revoke it. To entertain such a declaration the court would be exercising a jurisdiction to hear and determine which belonged only to the Minister. If a question should arise which made it desirable to take the opinion of the court, the Minister would no doubt give a reasoned decision which the court could review by the procedure laid down in *R.* v. *Northumberland Compensation Appeal Tribunal* [1952] 1 K.B. 338, or by a declaration. The appeal should be dismissed.

MORRIS and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *P. M. O'Connor* (*Foss, Bilbrough, Plaskitt and Co.*); *Sir H. Hylton-Foster*, Q.C., S.-G., and *R. J. Parker* (*Solicitor, Ministry of Health*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 815

DIVORCE: INSANITY: TEMPORARY ABSENCE FROM APPROVED INSTITUTION

Swymer *v.* Swymer

Lord Goddard, C.J., Romer and Hodson, L.JJ.

12th November, 1954

Appeal from Mr. Commissioner Grazebrook, Q.C. ([1954] 1 W.L.R. 1329; *ante*, p. 752).

A husband was admitted to a mental hospital pursuant to a reception order in 1925. In 1951 he was discharged "relieved" and immediately re-admitted as a voluntary patient under the Mental Treatment Act, 1930. He was incurably of unsound mind. In 1953 he was sent for treatment for a fractured leg to another hospital which was not an approved place within the Act of 1930, and remained there from January to May, returning to the mental hospital when the leg had healed. His name remained on the books of the mental hospital during his absence and regular reports were made on him to the superintendent of the mental hospital. His wife, on 21st October, 1953, presented a petition for divorce on the ground that he had been continuously under care and treatment for five years before the presentation of her petition. The commissioner refused to grant the petition. The wife appealed.

LORD GODDARD, C.J., said that by s. 1 (2) (*d*) of the Matrimonial Causes Act, 1950, a person of unsound mind was deemed to be under care and treatment while receiving treatment as a voluntary patient under the Mental Treatment Act, 1930, and the court

had therefore to consider the provisions of that Act to see whether the fact that the husband was sent to be treated for his broken leg to a general hospital which was not an approved place under the Act caused a breach in the care and treatment so that the period of five years' continuous treatment was broken. In his lordship's opinion it was clear that once a voluntary patient had applied for reception and been received as such, he so remained until one or other of the steps provided by the Act were taken; and accordingly the husband in the present case had always been a voluntary patient since his reception as such in December, 1951. The question then remained whether he was receiving treatment as such. His lordship thought that he was. There was nothing in the Act of 1930 to require that all treatment must be given within the curtilage of the approved institution. The temporary absence of a voluntary patient for convenience of nursing him for a physical as distinct from a mental injury did not break the continuity of his treatment. The appeal should be allowed.

HODSON, L.J., agreed with the above judgment and that of Romer, L.J., below.

ROMER, L.J., also agreed. The word "continuously" in s. 1 of the Act of 1950 should not be construed with absolute strictness, but should be interpreted, as it legitimately could be, in such a sense as to conform to the subject-matter, namely, mental treatment, in connection with which it was used. Parliament, by Sched. III to the Mental Treatment Act, 1930, had envisaged the making of rules under which voluntary patients might be absent for temporary periods, and must be taken to have known, when the Matrimonial Causes Act, 1950, was enacted, that during such periods of absence voluntary persons were, in many cases, not receiving actual "treatment" at all. Accordingly, the word "continuously" in the Act of 1950 should be read as including periods of authorised absence in the legislative conception of continuity; and such a conclusion accorded not only with common sense but with the true object of s. 1 of the Act of 1950. Appeal allowed.

APPEARANCES: *Dimitry Tolstoy* (*L. H. Whitlamsmith*, Law Society); *B. Stuart Horner* (*Official Solicitor*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 803**

PRACTICE: WRIT: PLAINTIFF DESCRIBED AS "ADMINISTRATRIX" IN TITLE AND AS "PLAINTIFF" IN INDORSEMENT: NO GRANT AT DATE OF WRIT: VALIDITY

Bowler *v.* John Mowlem & Co.

Denning, Hodson and Romer, L.JJ.

15th November, 1954

Appeal from Ormerod, J.

In a writ issued under the Fatal Accidents Acts, 1846–1908, and the Law Reform (Miscellaneous Provisions) Act, 1934, the plaintiff widow was described in the title of the action and the statement of claim as "administratrix," but as "plaintiff" in the indorsement of the writ. Letters of administration were not granted to the plaintiff until more than a year after the commencement of proceedings. The defendants contended that the writ had been issued in a representative capacity to which the plaintiff was not entitled and was, therefore, a nullity. Ormerod, J., held that the writ was a nullity. The plaintiff appealed.

DENNING, L.J., said that if a plaintiff brought an action as administratrix without having obtained a grant of administration, the action was a nullity and even a grant obtained soon after would not relate back. In the present writ the plaintiff was described as administratrix; that did not denote a representative capacity, but was simply a description of her status as it was believed to be. R.S.C., Ord. 3, r. 4, laid down that the indorsement was the place where a representative capacity must be indicated, and in the indorsement the plaintiff was not shown as administratrix. The statement of claim did not affect the matter one way or the other. The use of the term administratrix was a mere misdescription of title, which could be cured by amendment. The appeal should be allowed.

HODSON, L.J., agreed.

ROMER, L.J., dissented. Appeal allowed.

APPEARANCES: *N. R. Fox-Andrews*, Q.C., and *Ronald Hopkins* (*J. H. Fellowes*); *R. M. Everett*, Q.C., and *Norman Richards* (*E. P. Rugg & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1445**

CHANCERY DIVISION

WILL: OMISSION: WORDS SUPPLIED FROM PRECEDENT

***In re* Follett, deceased; Barclays Bank, Ltd. *v.* Dovell and Another**

Roxburgh, J. 9th November, 1954

Adjourned summons.

The testatrix, by her will dated 31st August, 1923, after creating two life interests, directed her trustees to pay the total income from her residuary trust to *B E* (the first defendant) "during her life . . . On and after the death of the said *B E* my trustees shall hold my residuary trust fund and the future income thereof in trust for all or such one or more exclusively or others of her child or children or remoter issue or any other person or persons as she should by deed or deeds revocable or irrevocable or by will or codicil without transgressing the rules against perpetuities appoint and in default of or subject to any such appointment in trust for her next of kin." It was argued for the second defendant, who was interested in default of appointment, that the following words from a precedent in Key and Elphinstone's Precedents in Conveyancing (11th ed., vol. 2, pp. 901–902), which was published in 1923, should be inserted on the ground that the testator must have intended their inclusion, namely, the words "of the others or other" instead of "or others," after the word "exclusively," and after the words "remoter issue" the words "at such age or time, or respective ages or times, if more than one in such shares, and with such trusts for their respective benefit and such provisions for their respective advancement (either during the life of my wife or after her death) and maintenance and education at the discretion of my trustees." In purported exercise of the power of appointment *B E* had appointed the whole of the residuary trust fund to herself absolutely. The court was asked to determine whether the first defendant had a general power of appointment enabling her to appoint the fund to herself absolutely, or a special power enabling her to appoint the fund in favour of her children or remoter issue, and in default thereof in favour of any persons (i) including herself, or (ii) not including herself.

ROXBURGH, J., said that the law in this connection was completely stated in *In re Smith* [1948] Ch. 49, by Vaisey, J., who said: "Where it is clear on the face of a will that the testator has not accurately or completely expressed his meaning by the words he has used, and it is also clear what are the words which he has omitted, those words may be supplied in order to effectuate the intention, as collected from the context." He (his lordship) had a compelling conviction on both those points. This was an accidental omission and he did not think that there was any doubt what that omission was. The court could take judicial notice that when the testatrix made her will there were available recognised books of precedents, and that she had intended to include in the clause the rest of the precedent from Key and Elphinstone, and the will should be construed therefore as if the rest of that clause had been inserted with the appropriate substitutions. The result was that the first defendant had only a special power of appointment in favour of children or remoter issue.

APPEARANCES: *Mark Cockle* (*Terence O'Shea, Lake & Co.*); *I. J. Lindner*, Q.C., and *G. H. Crispin* (*D. R. Wells* with them) (*Moon, Gilks & Moon* for *Campion, Symons & Co.*, Exmouth); *J. L. Arnold* (*Terence O'Shea, Lake & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 1430**

WILL: SUBSTITUTIONAL GIFT TO ISSUE AFTER LIFE INTEREST: SURVIVORSHIP

Mousley *v.* Rigby

Roxburgh, J. 16th November, 1954

Petition.

By this petition this court was asked to order the payment out of funds in court, paid in pursuant to an order in an administration action dated 16th April, 1872, which became payable on the death in 1945 of the testator's granddaughter, the tenant for life. By his will, dated 7th February, 1863, the testator devised and bequeathed a half share in his residuary estate after the death of the tenant for life to *J R*, and in case he (*J R*) should be then dead, the testator devised and bequeathed his (*J R's*) share "unto and equally between all his . . . children who shall be then living and the issue of such of them as shall

be then dead leaving issue in equal shares . . . but such issue to take only amongst them in equal shares the share or shares his or their parent or parents would have been entitled to if living . . ." He died in 1871. *J R* predeceased the tenant for life; he had four children who had died leaving issue and his share was, accordingly, divisible into four stirpital shares. It was conceded that "issue" was not restricted to the children of *J R's* children. The question on the petition relevant to this report was whether the issue of a *stirps* (who was dead at the date of distribution) had to survive that date in order to participate in the distribution of residue. (*Cur. adv. vult.*)

ROXBURGH, J., said the interpretation in *Martin* v. *Holgate* (1866), L.R. 1 H.L. 175, was inappropriate where "issue" was not restricted to "children," because there might be substitutions not only of a child for the founder of the *stirps* but of remoter issue for a child. It seemed impossible to doubt that the substitution of the remoter issue for the child must be at the date of the death of the tenant for life and this must be a contingent gift to the remoter issue subject to the contingency of surviving the tenant for life. The difference between the two cases did not occur to Malins, V.-C., in *In re Orton's Trust* (1866), L.R. 3 Eq. 175, because although he was concerned with issue more remote than children he felt "obliged" to follow *Martin* v. *Holgate*. *In re Orton's Trust* was indistinguishable from the present case, and if it had stood alone he might have felt bound to follow it. However, Sargant, J., in *In re Embury* (1913), 109 L.T. 511, said that as he had construed issue as not confined to children, it followed that the gift to issue must be construed as a contingent gift and not as a vested gift. Accordingly, that was a decision admittedly in conflict with *In re Orton's Trust*. Between those two conflicting decisions he preferred that of *In re Embury*. The result was that no issue could take unless he or she survived the testator's granddaughter. He would declare that the funds in court were divisible in equal shares *per stirpes* among such grandchildren of *J R* as survived the testator's granddaughter and the children living at her death of any such grandchildren who predeceased her.

Declaration accordingly.

APPEARANCES: *T. A. C. Burgess; R. S. Lazarus* and *E. M. Winterbotham* (*Kingsford, Dorman & Co.*, for *W. F. and W. Willoughby*, Daventry).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [3 W.L.R. 891

QUEEN'S BENCH DIVISION

SHIPPING: CHARTERPARTY: DUTY OF CHARTERERS TO NOMINATE SAFE LOADING PLACE

Compania Naviera Maropan S.A. *v.* Bowaters Lloyd Pulp and Paper Mills, Ltd.

Devlin, J. 8th November, 1954

Action.

By a charterparty, charterers chartered the steamship *Stork* to load a cargo of logs for carriage from Newfoundland to England. By cl. 1 of the charterparty it was agreed that the vessel should "proceed to not more than two approved loading places as ordered . . . or so near thereto as she may safely get . . . Charterers have the right to order the ship to load at two safe berths or loading places . . ." The charterers directed the ship to load at a place on the east coast of Newfoundland and on 25th October, 1952, the ship arrived at the place but, because of an easterly wind, she was unable to moor on that day. On the following day she was successfully moored but during a gale in the night she dragged her anchors, ran aground and was damaged. On a claim by the owners against the charterers for damages on the ground that the charterers had ordered the vessel to load at an unsafe place, Devlin, J., found that the master was not guilty of any negligence or imprudence and that the loading place was unsafe.

DEVLIN, J., said that the defendants first contended that the charterparty contained no warranty of safety; that if the loading place was unsafe, the master ought to have known, and did know, that it was unsafe, and went there of his own choice, so that the ship could not recover damages. But the charterparty could not mean that; there must be an obligation on the charterers to nominate at least one loading place, and this must be implicit in that same condition about safety, so as to prevent the making of a derisory nomination; any loading place nominated must be safe, that is, safe for the ship chartered. Moreover "approved" meant approval in the sense of being generally acceptable to the trade, and took for granted that the approved place would be safe. The defendants further contended, as a general proposition of law, that, whenever a voyage charterer gave an order which was beyond his powers under the charter, and the master obeyed, he did so at his peril, as he was free to disregard it if he wished. That was very similar to the proposition rejected in *Grace's* case [1950] 2 K.B. 383, since when there had been a contrary decision of the High Court of Australia in the *Reardon Smith* case [1954] 2 Ll. L.R. 148; there were other authorities either way. When examined, the defendants' contention struck at a fundamental principle in the law of contract, that a man is entitled to act in the faith that the other party to the contract is carrying out his part; a promisor could not say that the promisee had no right to assume that the promise had been faithfully carried out, but should make his own inquiries in the matter. If a charterer wanted the advantage of naming, generally at the last moment, a place of his own choice, he should take the responsibility of seeing that it was safe. A further contention was that the master had actual knowledge of the full position that the berthing place was dangerous, but nevertheless made up his mind to berth, so that the owners could not recover on the principle of *volenti non fit injuria*. The master had substantial fears, and he had allowed them to be overridden; it was peculiarly a case where a master might think it wise to defer to those with local experience, and he had received strong reassurances from the defendants' pilot. Accordingly, there had been a warranty that the place of loading was safe; it had been broken, and damage to the ship was the natural consequence, so that the plaintiffs were entitled to damages. Judgment for the plaintiffs.

APPEARANCES: *E. W. Roskill*, Q.C., and *H. V. Brandon* (*Stokes & Mitcalfe*); *K. S. Carpmael*, Q.C., and *T. G. Roche* (*Lawrence Jones & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 894

PROBATE, DIVORCE AND ADMIRALTY DIVISION

DIVORCE: CRUELTY: CONVICTIONS FOR CRIME

Woollard *v.* Woollard

Mr. Commissioner Latey, Q.C. 12th October, 1954

Petition by wife for divorce on the ground of cruelty.

The parties were married in August, 1934, and there were no children. Evidence that the wife was at the time of the marriage unaware that her husband had already had two convictions, one for stealing watches and one for false pretences, was accepted. In January, 1939, the husband was convicted at Middlesex sessions of fraudulent conversion and was bound over. In 1939, the husband was made bankrupt, and for some time after the conviction of January, 1939, the parties mainly subsisted upon the wife's earnings. In July, 1941, he was sentenced to six months' imprisonment for theft. She visited him in gaol, but on his release in November, 1941, she refused to go back to him. The court accepted in substance her evidence that on an occasion when the wife was refusing to return to the husband he assaulted her, that she was frightened, and that the husband later that night created a scene outside her house. Evidence that she had remonstrated with him about his convictions was also accepted. For some months after this scene the wife neither saw nor heard from him; but early in 1942 he visited her and persuaded her to have a reconciliation upon the basis that he would turn over a new leaf. In 1944 he had to go to the Hebrides to face a charge of conversion; but he was acquitted, and the wife accepted his assurance that the matter was a mistake. Towards the end of 1947 the husband was charged with theft and sentenced to eighteen months' imprisonment; but his conviction was quashed by the Court of Criminal Appeal. The wife stated that she was very upset and afraid that he was going wrong. In 1948, the husband met one Maclure and his mother, an elderly lady. In less than a year he obtained by fraud from the lady sums totalling some £1,700: his wife was at the time unaware of his offence. In June, 1949, she opened a banking account in her own name at the bank of which her employer was a customer; she said that she did so at her husband's request, because, as he said, as an undischarged bankrupt he himself could not open an account. In effect he operated the account, and he explained that all the money paid in came from moneys paid to him in respect of alleged patent rights and that none of the moneys improperly obtained from Mrs. Maclure went through that account. Evidence to the contrary was accepted. On 17th July, 1951, the husband was sentenced to three and a half years' imprisonment at the

Central Criminal Court. The wife at first visited the husband regularly in prison and wrote many letters to him in terms of the greatest affection, and expressed fervent hopes for a complete reunion in due course; and in the early stages of his imprisonment she was convinced of his innocence although suffering keen anxiety. But towards the end of 1951, and after his application for leave to appeal had been refused, other matters began to come to her knowledge. Early in 1952, she was told by creditors of her husband that he had told them to look to her for payment, although she had no money, apart from her wages. Her letters became less affectionate, and she blamed her husband for the injury to her health. She ceased to visit him, and in February, 1953, she informed him that she intended to petition for divorce. Her change of attitude brought on her a series of bitter and resentful letters from her husband and he accused her family of making demands which had to be met regardless of the cost in jobs, income or even personal freedom.

Mr. COMMISSIONER LATEY, Q.C., said that he did not find that the conviction in 1939 affected the wife's health, although it was a melancholy augury for the future. The assault in 1941 had amounted to cruelty, but it had been condoned. But the circumstances of the husband's three convictions and his criminal activities, his unjust resentment at her justifiable remonstrances, his failure to realise a promise to reform, had injured the wife's health and had caused her fear and embarrassment when she realised that through his activities she herself might be involved through the bank account. He must be held, in such circumstances, to have been responsible for the consequences of his actions on the wife's well-being, and there would be a decree of divorce on the ground of cruelty. Decree *nisi* of divorce.

APPEARANCES: *P. R. Hollins* (*Harold Kenwright & Cox*); *John Mortimer* and *David Knight* (*P. Simes*, Law Society Divorce Department).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 855**

HUSBAND AND WIFE: CRUELTY: INDECENT ASSAULT ON CHILD

Cooper *v.* Cooper

Lord Merriman, P., and Karminski, J. 20th October, 1954

Appeal from justices.

The parties were married in 1940 and there was one child, a girl who was born in 1944. In April, 1954, the wife made a complaint that the husband had been guilty of persistent cruelty and that he had deserted her; she alleged, in addition to certain assaults on two or three occasions, one of which had occurred some years previously, that the husband had committed an indecent assault upon the child of the marriage, and that she had been told by the child of this on Easter Monday, 1954, a day on which a physical assault on her also had been alleged. The husband had pleaded guilty to the indecent assault on 29th April, 1954, and had been fined £20. The justices dismissed the wife's complaint, holding in respect of the evidence in general that they preferred that of the husband, and that the indecent assault did not amount to an act of cruelty, for there was no evidence to show that it had taken place in the wife's presence or that the husband had intended to injure his wife.

KARMINSKI, J., who was asked to give the first judgment, referred to *Thompson* v. *Thompson* (1901), 17 T.L.R. 572, *Bosworthick* v. *Bosworthick* (1901), 18 T.L.R. 104, and to the finding of cruelty in *Boyd* v. *Boyd* (1938), 55 T.L.R. 3 (as noted in *Edwards* v. *Edwards* [1948] P. 268, at p. 271). Those cases established that sexual offences committed with persons other than the wife might amount to cruelty; but the question had been raised in recent decisions to what extent an intention to injure was an essential ingredient in cruelty. Denning, L.J., in *Kaslefsky* v. *Kaslefsky* [1951] P. 38, at p. 46, had said that such an intention might readily be inferred when "it is the natural consequence of the conduct, especially when the husband knows, or it has been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the wife or not." Applying that test to a case such as the present, where there was nothing to show that the wife was lacking in normal sensitiveness, the court could not but infer that the husband must have known, had he given thought, that his conduct would cause the greatest distress. Such an intention could also be inferred, however, if the husband had acted in a manner careless and indifferent to the effect of his conduct. It was, however, necessary to consider a charge of cruelty in the light of all the circumstances (see Lord Tucker's judgment in *Jamieson* v. *Jamieson* [1952] A.C. 525, 550) and the case should accordingly be sent back to the justices for a re-hearing.

LORD MERRIMAN, P., concurring, emphasised that *Jamieson* v. *Jamieson, supra*, did not lay down that an intent to injure was an essential ingredient in every case of cruelty, although, as stated at p. 535 of Lord Normand's judgment, it might have a decisive importance in a doubtful case.

Appeal allowed. Re-hearing ordered. Leave to appeal.

APPEARANCES: *Miss Morgan Gibbon* (*Copley Singleton and Billson*, Croydon); *J. F. Coplestone-Boughey* (*Sharpe, Pritchard and Co.*, for *E. Cecil Francis*, Chester).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 867**

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 25th November:—

Bank of Scotland Order Confirmation.
Churches and Universities (Scotland) Widows' and Orphans' Fund Order Confirmation.
Civil Defence (Armed Forces).
Electricity Reorganisation (Scotland).
Expiring Laws Continuance (No. 2).
Food and Drugs Amendment.
Mines and Quarries.
National Gallery and Tate Gallery.
Overseas Resources Development.
Pests.
Pharmacy.
Post Office Savings Bank.
Town and Country Planning.
Town and Country Planning (Scotland).
Transport Charges &c. (Miscellaneous Provisions).
Trustee Savings Banks.

HOUSE OF COMMONS

QUESTIONS

LEGAL AID (UNSUCCESSFUL PLAINTIFFS)

The ATTORNEY-GENERAL declined a suggestion by Brigadier MEDLICOTT that legislation should be introduced to extend the legal aid scheme so as to give the judges power to order that, where a legally aided plaintiff had been unsuccessful in an action, the defendant's taxed costs should be paid out of the legal aid fund.

This problem, said the Attorney-General, had been fully considered by the Rushcliffe Committee and during the passage of the Legal Aid and Advice Bill through the House. It would no doubt be fully reconsidered when a general review of the Legal Aid and Advice Act took place. The fact that an assisted person was not called upon to make any contribution to his own costs did not mean that he might not find himself ordered to pay towards his successful opponent's costs a sum which was a reasonable one for him to pay, having regard to all the circumstances, including, of course, his conduct in relation to the dispute. [22nd November.

LEGAL AID (GRANTING OF CERTIFICATES)

Asked by Brigadier MEDLICOTT whether he would consider amending the legal aid scheme so as to allow a prospective defendant to submit evidence tending to show why a legal aid certificate should not be granted to the prospective plaintiff, the ATTORNEY-GENERAL said that under regulations made this year an area committee might discharge a legal aid certificate when, as a result of information coming to its knowledge, it considered that an assisted person no longer had reasonable ground for taking, defending, or being a party to the proceedings, or that it was unreasonable in the circumstances for him to continue to receive legal aid. The prospective defendant was not precluded from making representations which might lead to the certificate being discharged under this provision. [22nd November.

LEGAL AID SCHEME (COST)

The ATTORNEY-GENERAL said that the cost of the legal aid scheme to the Exchequer up to 31st March, 1954, had been £2,508,000. [22nd November.

MARRIED WOMEN'S STATUS (JUDGMENT)

Asked by Mr. TURNER-SAMUELS whether he had considered the observations of the Master of the Rolls in the recent case of *Re Murray, deceased; Martins Bank, Ltd.* v. *Dill* [1954] 3 W.L.R. 521; *ante*, p. 716, regarding the emancipated status of a married woman to-day having a bearing on questions as to whether, from the point of view of public policy, clauses in wills were desirable which might make her capacity to enjoy in her own right substantial proprietary interests dependent on the willingness of her husband to change his name, the ATTORNEY-GENERAL said he did not think the observations called for any legislation. Such clauses might well be invalid under the existing law either on the ground of uncertainty or on the ground that they were contrary to public policy or both. [22nd November.

QUEEN'S BENCH JUDGES (LONDON)

Wing-Commander BULLUS asked how many of the judges of the Queen's Bench Division were remaining in London this term to try civil actions, and whether the arrangements were adequate.

The ATTORNEY-GENERAL said that the number of judges in London fluctuated according to the demands of the circuits, but on the average ten judges of the Queen's Bench Division would be available for the trial of civil actions this term. On many occasions this term assistance had been given by one or more Chancery judges, and arrangements had been made for a judge of the Chancery Division to sit in the Queen's Bench Division throughout next term. The Lord Chancellor was considering what further steps could be taken to reduce delays in the hearing of civil actions. [22nd November.

NON-JURY ACTIONS (DELAYS IN TRIAL)

The ATTORNEY-GENERAL said that the average time between the setting down and the trial in the case of a non-jury action was at present about ten months in London and twelve months in Manchester. At Liverpool the period was about seven months and at other towns considerably less. The position at Liverpool and Manchester would no doubt improve when effect could be given to the measures for establishing permanent assize courts in those towns. He would emphasise that setting a case down for trial did not necessarily mean that the parties were ready for or wanted trial the next day. [22nd November.

JURIES (MAJORITY DECISIONS)

Major LLOYD GEORGE said that an amendment of the law to enable juries in criminal cases to base their verdicts on majority decisions of not less than nine to three except in capital cases would be a departure from traditional practice in England and Wales and would require most careful consideration. At present he could only say that he had noted Brigadier MEDLICOTT's suggestion. [22nd November.

DEATH DUTIES (VALUATION APPEALS)

Asked whether consideration had been given to the proposal for a new appellate court or tribunal between the Commissioners of Inland Revenue and the High Court for the purpose of hearing death duty value appeals from the Commissioners' decision, the FINANCIAL SECRETARY TO THE TREASURY said the matter was under consideration but he was not at present in a position to make a statement. [23rd November.

WINDOW CLEANERS (SAFETY EQUIPMENT)

Asked whether he was aware of recent court and Court of Appeal decisions on the question of window cleaning and accidents arising therefrom and whether he would introduce regulations to provide that, in the construction of new buildings, and where possible, in existing buildings, provision should be made for the use by window cleaners of appropriate safety equipment, Mr. DUNCAN SANDYS said he had no power to make such regulations. [23rd November.

NEW OFFICES (RATING VALUATION)

Mr. DEEDES said that the valuation officers of the Inland Revenue were at present valuing new blocks of office buildings by reference to the values of similar properties already entered in the valuation list for the particular area. He agreed that this was quite contrary to the Rating and Valuation Act, 1925, which governed the determination of annual value of miscellaneous properties other than houses, but until revaluation was completed this was the fairest way of valuing. [23rd November.

MORELLE, LTD. *v.* WATERWORTH

The LORD PRIVY SEAL said that the Crown had not taken possession of any of the property which, under the Court of Appeal decision in *Morelle, Ltd.* v. *Waterworth* [1954] 3 W.L.R. 257; *ante*, p. 509, vested in it, and did not at present propose to do so. It was hoped to test the validity of the court's decision in legal proceedings in the near future. Meanwhile inquiries about the property should be addressed to the Treasury Solicitor.

Mr. BARNETT JANNER asked whether a case was *sub judice*, and if not, why was not the Crown carrying out its duties under the Rent Acts to provide a rent book to the tenants? Would the Government take steps to fine someone or send them to prison if the Crown did not fulfil its obligations? [23rd November.

RENT TRIBUNAL APPLICATIONS (SERVICES INCREASES)

Mr. DEEDES gave the following details:—

Applications received under s. 40 of the Housing Repairs and Rents Act, 1954, up to and including 31st October, 1954—

Name of Tribunal	*Applications Received*
Barking	1
Camberwell (Lambeth)	1
Croydon	1
Ealing	20
Islington	3
Lewisham	3
Hammersmith	26
Kingston on Thames	4
Paddington North	36
Paddington South	11
Hampstead	27
Twickenham	19
Walthamstow	3
Westminster	11
Wimbledon	13
Leeds	2
Manchester	35
Brighton	7
Gateshead	7
Preston	—

[23rd November.

STATUTORY INSTRUMENTS

Bath Corporation Water Order, 1954. (S.I. 1954 No. 1529.) 8d.

Control of Seeds (Revocation) (Scotland) Order, 1954. (S.I. 1954 No. 1541 (S. 174).)

Courts Martial Appeal (Amendment) Rules, 1954. (S.I. 1954 No. 1557 (L. 16).)

Cutlery Wages Council (Great Britain) Wages Regulation (No. 2) Order, 1954. (S.I. 1954 No. 1543.) 8d.

Forth River Purification Board Administrative Scheme Order, 1954. (S.I. 1954 No. 1528 (S. 172).) 6d.

Huddersfield (Amendment of Local Enactments) Order, 1954. (S.I. 1954 No. 1534.) 6d.

Import Duties (Exemptions) (No. 8) Order, 1954. (S.I. 1954 No. 1556.)

Isle of Wight (Conservation of Water) Order, 1954. (S.I. 1954 No. 1536.)

London Traffic (Miscellaneous Provisions) (Amendment) (No. 2) Regulations, 1954. (S.I. 1954 No. 1547.)

London Traffic (Miscellaneous Provisions) (Amendment) (No. 3) Regulations, 1954. (S.I. 1954 No. 1548.) 5d.

London Traffic (Unilateral Waiting) (No. 1) Regulations, 1954. (S.I. 1954 No. 1545.) 5d.

London Traffic (Unilateral Waiting) (No. 2) Regulations, 1954. (S.I. 1954 No. 1546.) 5d.

Maidstone Extension (Amendment) Order, 1954. (S.I. 1954 No. 1538.)

Malmesbury Rural (Corston Spring) Water Order, 1954. (S.I. 1954 No. 1537.)

Nantwich (Repeal of Local Enactments) Order, 1954. (S.I. 1954 No. 1535.)

Draft **Parliamentary Constituencies** Orders. Fifty-two Draft Orders under the House of Commons (Redistribution of Seats) Act, 1949, have been published. They relate to the following areas: Bedford and Mid-Bedfordshire; Bethnal Green, Hackney and Stoke Newington (5d.); Billericay, South East Essex, Romford and Southend (5d.); Birmingham and North Warwickshire (5d.); Bosworth and Loughborough; Bradford, Brighouse and Spenborough and Dewsbury (5d.); Carmarthenshire; Chelmsford, Chigwell and Woodford; Blackburn, Chorley and Darwen (5d.); Crewe, Knutsford, Nantwich and Northwich (5d.); Croydon; Derby and South-East Derbyshire; Dudley and South Staffordshire; Fulham and Hammersmith (5d.); Gateshead and Jarrow; Gloucestershire (5d.); Hampshire (5d.); Harborough and Leicester South East; Harrow; Hertfordshire (5d.); Huddersfield, Colne Valley and Penistone; Kingston upon Thames, Surbiton and Wimbledon; Leeds (5d.); Liverpool and South West Lancashire (5d.); Manchester, Oldham and Ashton under Lyne (5d.); Newcastle upon Tyne; Newport and Monmouth; North Kent; Nottinghamshire (5d.); Plymouth; Reading, Newbury and Wokingham; Sheffield (5d.); South East Staffordshire; Spelthorne, Feltham and Heston and Isleworth; Stoke on Trent; Sussex (5d.); Swansea; Wakefield and Hemsworth; Warrington and Newton; Wolverhampton; Woolwich (5d.); Yorkshire, East Riding (5d.); Bute and North Ayrshire and Central Ayrshire; East Aberdeenshire, West Aberdeenshire, Aberdeen North and Aberdeen South; Edinburgh Central and Edinburgh Pentlands; Edinburgh North and Edinburgh West; Glasgow Bridgeton, Glasgow Provan and Glasgow Shettleston (5d.); Glasgow Pollok, Glasgow Craigton, Glasgow Govan and Glasgow Gorbals (5d.); Glasgow Scotstoun, Glasgow Hillhead and Glasgow Woodside (5d.); Glasgow Springburn, Glasgow Central and Glasgow Kelvingrove; Midlothian, Roxburgh, Selkirk and Peebles, and Edinburgh East; West Stirlingshire and Stirling and Falkirk Burghs.

Remuneration of Teachers Amending Order, 1954. (S.I. 1954 No. 1544.)

Retention of Cables and Pipe under Highway (Pembrokeshire) (No. 1) Order, 1954. (S.I. 1954 No. 1530.)

River Purification Authority (Commencement No. 6) Order, 1954. (S.I. 1954 No. 1540 (C. 15) (S. 173).)

Road Haulage Wages Council Wages Regulation (Amendment) (No. 2) Order, 1954. (S.I. 1954 No. 1526.)

Stopping up of Highways (Dorsetshire) (No. 2) Order, 1954 (Amendment) Order, 1954. (S.I. 1954 No. 1550.)

Stopping up of Highways (Oxfordshire) (No. 3) Order, 1954. (S.I. 1954 No. 1551.)

Stopping up of Highways (Worcestershire) (No. 8) Order, 1954. (S.I. 1954 No. 1533.)

Sugar Confectionery and Food Preserving Wages Council (Great Britain) Wages Regulation Order, 1954. (S.I. 1954 No. 1527.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Road Traffic Act, 1930—SUMMONS AGAINST FIRM

Q. The police, on making inquiries into a road accident, suspected that a vehicle belonging to two or more persons carrying on business under the firm name of "A. & B. Smith and Co." was involved. It is not known exactly the terms on which the business is carried on but, presumably, on some sort of partnership basis. Neither is it known what persons are comprised in the "A. & B. Smith & Co." The vehicle is registered in the name of "A. & B. Smith & Co." The police have, apparently, interviewed one only of the persons believed to be interested and he has informed them that he has no knowledge of who was the driver of the vehicle on the day in question. The police have issued a summons under s. 113 of the Road Traffic Act, 1930, against "A. & B. Smith & Co.," which has been served on one of the reputed partners. Having regard to s. 100 of the Magistrates' Courts Act, 1952, is the summons in order and can all the members of the partnership as and when ascertained be convicted and punished?

A. Only individuals or incorporated bodies can be summoned to magistrates' courts, and a summons directed to a firm is, in our opinion, out of order. In Paley on Summary Convictions, 10th ed., at p. 277, it is said: "If there be several offenders, each must be named. The court refused to entertain a conviction in which the persons charged were described as Messrs. Harrison and Co., and treated it as a nullity, even against the party named. For, though neither the defendant Harrison nor the other objected to the conviction on that ground, Lord Kenyon said the court were bound to take care that summary proceedings before magistrates were regularly conducted, whether the parties objected to them or not; and, in that case, the court could not tell upon the face of the proceedings but that the delinquency of Harrison's partners, who were not before the court, might have been imputed to him (*R.* v. *Harrison and Co.* (1800), 8 T.R. 508)." The person served may, if he wishes, nevertheless, answer the summons as being applicable to him personally and waive any objections, in which case he could properly be convicted *in his own name* (*R.* v. *Hughes* (1879), 4 Q.B.D. 614; *Egginton* v. *Pearl* (1875), 40 J.P. 56). If, however, there is a protest against the summons in its present form, it is not clear if the information and summons could be amended to a different name, e.g., to "A. Smith" alone, or to "A. Smith, trading as (or partner in) A. & B. Smith & Co.," pursuant to the Magistrates' Courts Act, 1952, s. 100. In *Oxford Tramway Co.* v. *Sankey* (1890), 54 J.P. 564, it was held that a summons could not be "amended" by substituting *a limited company* for the individual summoned. On the other hand, Paley, at p. 297, says: "The court cannot, without appearance and consent, substitute one defendant for another. But where summonses were directed to a person described by name, which were intended for, and were, in fact, served upon the person's husband and he, in a letter to the justices' clerk, asked for an adjournment 'of the summons against me' it was held that the justices were entitled to alter the name, and that, as the true defendant had been in no way deceived or misled, the convictions were right (*R.* v. *Norkett; ex parte Geach* (1915), 139 L.T. 316)."

The case of *Dring* v. *Mann* (1948), 112 J.P. 270 (mistake as to Christian name) does not seem to be material here. It therefore seems that the magistrates may be able to amend the information and summons against the firm, so long as they offer an adjournment to the person summoned and, if the defendant in fact suffered no prejudice thereby, the High Court might well uphold the magistrates' action. The facts here differ from the *Oxford Tramway* case because, if the defendant can be shown to be a partner in the firm or the firm itself, he is in effect the person sought to be summoned. However, if six months have not elapsed since the offence was committed, the police can safeguard themselves procedurally by getting leave to withdraw the summons against the firm and laying a fresh information against the individual. The police must, of course, prove their case and, if the charge is under the Road Traffic Act, 1930, s. 113 (3) (*a*), they must show that the defendant is, in fact, a partner in the firm or the firm itself. If the charge is under s. 113 (3) (*b*), however, they need not show this so long as they prove he has some relevant interest, and it is immaterial that he is the owner (*Pulton* v. *Leader* [1949] 2 All E.R. 747).

The following extract from Stones Justices' Manual, 86th ed., pp. 234–5, deals with the question whether all the partners can be convicted: "Some difference of opinion and practice exists on this question, some parties contending that certain offences

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They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

are joint and indivisible, and subject the offenders, however numerous, to one penalty only; as, for instance, co-partners guilty of an offence against the licensing laws as ale-house keepers, or exposing goods for sale on a causeway contrary to a borough bye-law; others maintaining that there is at the present time no legal distinction between a joint and several offence, and each offender must be adjudged to pay the whole penalty or undergo the entire imprisonment assigned by the statute, and that the justices cannot adjudge each offender to pay a portion of the penalty any more than they can adjudge each to suffer a portion of the imprisonment. If there be a joint offence subjecting all the offenders, e.g., the membership of a partnership firm, to one penalty, the prosecution may proceed against one or more who can be separately fined, or against all the offenders who may be jointly convicted, in which event until the payment of the fine, each offender will be liable in turn to be proceeded against for default in payment of the fine imposed. The omission of a *particeps criminis* cannot be taken advantage of by those who are prosecuted." If the magistrates nevertheless purport to convict the "firm," it seems that all the partners, other than the one who has had the summons, can be proceeded against and cannot plead *autrefois convict* as, never having been before the court or even summoned to it, they have not been in peril of conviction. The partner served with the summons could, probably, apply to quash the conviction of the "firm," but could not then plead *autrefois convict* if fresh proceedings were taken against him (*Conlin* v. *Patterson* [1915] 2 Ir. R. 169). This, however, is a matter which will better be considered when the precise decision of the magistrates is known.

Agricultural Holdings—Possession Proceedings under Agricultural Holdings Act following Rent Acts Proceedings

Q. The plaintiff is the owner of premises comprising a cottage, garden, orchard and out-houses of a total area of about two acres. They are let to the defendant at a yearly rental of £25. Notice to quit was served on the defendant on 8th December, 1952, and expired on 25th December, 1953, the contractual yearly tenancy thus being terminated on that date. The defendant having failed to vacate the premises, proceedings were brought by the plaintiff for possession in the county court on 12th July, 1954, the claim being based solely on the ground that he required them as a residence for himself under para. (*h*) of Sched. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. The judge decided that, although it would be reasonable to make an order, the greater hardship lay with the defendant, and he therefore refused to make an order on this ground. The possibility of bringing proceedings for possession on behalf of the plaintiff under the Agricultural Holdings Act had previously been considered but it was decided not to do so on the ground that, as the defendant worked as a charwoman for three hours every morning and spent most of her time with relatives in the village, it would not be possible to state that the premises formed an agricultural holding, since she did not use them for purposes of a trade or business. However, the most important argument produced by the defendant at the hearing of the case was that, as well as her work as a charwoman, she kept chickens at the premises and produced fruit and vegetables there for sale from which she gained approximately one-half of her livelihood. In view of the evidence given by the defendant, can it now be argued that she was using the premises as an agricultural holding as defined by s. 1 (2) of the Agricultural Holdings Act, 1948, that she was given the correct twelve months' notice in accordance with s. 23 of this Act and that, as no counter-notice was served by her under s. 24 (1) of the Act she is no longer entitled to remain in possession. In other words can proceedings be brought under the Agricultural Holdings Act, 1948, based on the same notice to quit or will it be open to the defendant to state that, as the plaintiff has elected to bring proceedings under the Rent Acts, he cannot now bring further proceedings under the Agricultural Holdings Act? It should be mentioned that the notice to quit was in the normal form and did not refer, either in the heading or context, to this Act.

A. Support for the suggested argument could, in our opinion, be found in two decisions; but it is right to add that the facts of the case may be found to fall short of what is required. (i) The first obstacle would be a defence of *res judicata*. In reply, reliance could be placed on *Stone* (*J. & F.*) *Lighting and Radio, Ltd.* v. *Levitt* [1947] A.C. 209, it being contended that the judgment of 12th July last was based on the assumption that the court's jurisdiction was limited by the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 3 (1), i.e., on the assumption that the premises were a dwelling-house to which the principal Acts applied, whereas in fact the Agricultural Holdings Act, 1948, s. 95 and Sched. VII, para. 1, excluded them. It may be objected that there was no "agreement" or "acceptance of the position" as there was in the *Stone* case; but in our opinion the distinction would be without difference, and it could be rejoined that if the tenant kept the vital information to herself until the trial of the action, there is all the less ground for estopping the plaintiff if estoppel were a valid plea. (ii) The question whether the premises are an agricultural holding is, however, fraught with even greater difficulty; and we would refer to the article on "Dwelling-house an Agricultural Holding," at p. 483, *ante*, and to the recent decision in *Blackmore* v. *Butler* [1954] 3 W.L.R. 62; *ante*, p. 405 (C.A.) which does show that a dwelling-house can be an agricultural holding, but which might be distinguished in that in that case the house was occupied by a whole-time farm worker and had previously been so occupied. It would, however, be open to the plaintiff to contend that the essential requirements were fulfilled in his case, some reliance being placed on what was said in *Dunn* v. *Fidoe* [1950] 2 All E.R. 685 (C.A.) and *Howkins* v. *Jardine* [1951] 1 K.B. 614 (C.A.) as showing that the tenant need not devote all his energy to agriculture in order to make the premises an agricultural holding; and, for possible persuasive effect, to the unreported county court decision (*Adsetts* v. *Heath and Others*) discussed in an article entitled "Smithy an Agricultural Holding" in our issue of 29th September, 1951 (95 Sol. J. 620).

Settlement—Dividend on Shares Paid out of Sale of Capital Assets—Whether Income or Capital in Hands of Trustees

Q. Under the will of *M B*, deceased, her daughter, *L B*, is entitled to the life interest in the estate and there are certain remainders over after the termination of the daughter's life interest. A sum of £37 10s. has recently been received from one of the companies in which part of the trust funds are invested and the following is a copy of the notice on the warrant. "In accordance with resolutions passed at the annual general meeting of the company on the 1st of May, 1953, and at a subsequent meeting of the directors of the company held on the same day, attached is a warrant in payment of the amount due to you on your holding of the company's ordinary shares in respect of the dividends of 2d. and 4d. per share payable out of capital profit arising from the sales of portions of the company's freeholds lands and premises. The directors are advised that as this dividend is being paid out of capital profit, in respect of which the company is not liable to pay and has not paid income tax, the amounts received by individual shareholders as their participation in the dividend will not be subject to tax in their hands and should not therefore be included by them in their returns for assessment to income tax (including sur-tax)." We assume that the payment in question should be regarded by the trustees as capital of the estate and not as income due to *L B*. Are we correct?

A. The question of whether a distribution of "capital" profits by a company is an accretion to capital where the shares are held by trustees or an item of income payable to the tenant for life is never easy to decide. In the old case of *Bouch* v. *Sproule* (1885), 29 Ch. D. 635; (1887), 12 App. Cas. 385, it was held that it was for the company to decide whether a particular payment was capital or income in the hands of the recipient. The decision in that case is, however, considerably narrowed by the interpretation of it by the Privy Council in *Hill* v. *Permanent Trustee Co. of New South Wales* [1930] A.C. 720, which limited the earlier decision to cases where the company has power to make such a determination which will be binding on the shareholders. In *Hill's* case it was held that a distribution arising from the sale of breeding stock made as "a distribution of capital assets in advance of the winding up" was income in the hands of the trustees who received it. *Hill's* case was, however, distinguished in *Re Ward's Will Trusts* [1936] Ch. 704, where the company exercised a power in their articles enabling them to distribute the proceeds of sale of ships and investments among the shareholders on the footing that the same should be received as capital. It was held, as a matter of construction, that the payment made to the trustees was an accretion to the capital. In the present case we consider that, except for an application to the court which scarcely seems warranted by the sum involved, the only safe course for the trustees is for them to treat the present payment as an addition to capital, leaving it to the life tenant to take further action if she is so inclined.

NOTES AND NEWS

Honours and Appointments

The Right Hon. Sir HARTLEY SHAWCROSS, Q.C., M.P., has been elected Treasurer of Gray's Inn for 1955 in succession to His Royal Highness The Duke of Gloucester. The Honourable Mr. Justice HILBERY has been elected Vice-Treasurer.

Mr. H. B. WILLIAMS, Q.C., has been elected a Master of the Bench of the Middle Temple.

The Queen has signified her intention of appointing Sir FREDERICK WILLIAM GENTLE, Q.C., to be Judge Advocate General of Her Majesty's Forces in succession to Sir Henry MacGeagh, G.C.V.O., K.C.B., K.B.E., T.D., Q.C., who is retiring on 31st December.

Mr. CYRIL DOUGLAS BREWER, at present a committee clerk in Derby town clerk's department, has been appointed assistant solicitor to Bolton Corporation and will take up his duties on 6th December.

Mr. KENNETH GOODACRE, town clerk of Leicester, has been appointed clerk to the Middlesex County Council in succession to Sir Clifford Radcliffe, who is retiring shortly after thirty-five years' service with the council.

Sir EDWIN S. HERBERT, a member of the Council of The Law Society, has been appointed a member of the Board of Associated-Rediffusion, Ltd., a new company formed to carry out a programme contract with the Independent Television Authority.

The Board of Trade have appointed Mr. C. A. SLATFORD to be Custodian of Enemy Property for England with effect from 11th November, in place of Mr. A. J. Campbell.

Personal Notes

Mr. Samuel Clapham, clerk to Keighley Borough Justices, is to retire after more than twenty years' service.

Miscellaneous

CITY OF LONDON COLLEGE

Five special lectures on "Professional Negligence" will be delivered by Mr. J. P. Eddy, Q.C., on Wednesdays at 5.30 p.m. from 12th January to 9th February, 1955, at the City of London College, Moorgate, E.C.2. Further particulars may be obtained from the secretary of the college.

DOUBLE TAXATION: PAKISTAN

Discussions for the avoidance of double taxation of income which opened at Karachi on 8th November, 1954, between the representatives of the Governments of the United Kingdom and Pakistan have concluded and agreement has been reached. The agreement will be submitted to both Governments for their approval and the terms will be announced thereafter.

Wills and Bequests

Mr. A. W. Gay, solicitor, of Romford, left £39,733 (£39,099 net).

Mr. R. G. F. Tansley, solicitor, of Hythe, Kent, left £42,509.

OBITUARY

MR. S. G. ANSELL

Mr. Sydney George Ansell, solicitor, of Coventry, died on 23rd November, aged 58. He was for twenty years baritone soloist in Coventry Cathedral Choir. He was admitted in 1925.

MR. T. BIRCH

Mr. Thomas Birch, for fifty-four years managing clerk with Messrs. Halliley and Morrison, solicitors, of Bedford, died recently, aged 88. He was at work until just before his death.

MR. J. G. BOSMAN

Mr. Jack Gerald Bosman, solicitor, of London, E.C.2, was killed in a flying accident on 28th November. He was admitted in 1946.

MR. H. H. PAYNE

Mr. Harold Heath Payne, J.P., formerly Registrar of the County Courts of Portsmouth and Southampton, died on 20th November, aged 74.

MR. G. C. PORTER

Mr. Gwyn Conway Porter, solicitor, of Llandilo, died on 27th November, aged 68. A founder and vice-president of the West Wales Law Society, he was admitted in 1908.

MR. H. J. WILLEY

Mr. Henry John Willey, solicitor, of London, W.C.1, and Wimbledon, S.W.19, died on 3rd November, aged 65. He was admitted in 1937.

SOCIETIES

The sixty-second annual meeting of the BLACKPOOL AND FYLDE LAW SOCIETY was held on 11th November at Blackpool. The president, Mr. T. Underwood, was in the chair. The following officers were elected for the ensuing year: Mr. T. Carter, president; Mr. J. L. Adshead, vice-president and assistant secretary; Lt.-Col. Eric Read, T.D., honorary secretary; and Mr. H. S. Ellis, honorary treasurer. The same evening the annual dinner was held, when the principal guests were Mr. F. H. Jessop, President of The Law Society, Judge R. Peel, O.B.E., Q.C., and Mr. J. R. D. Crichton, Q.C., the Recorder of Blackpool. Judge Allan Walmsley was unavoidably absent.

The annual dinner of the BRISTOL INCORPORATED LAW SOCIETY was held on 18th November at the Royal West of England Academy. Among the many guests were Mr. Justice Finnemore, the Lord Mayor of Bristol, Alderman Gilbert G. Adams, Mr. F. H. Jessop, President of The Law Society, Judge E. H. C. Wethered, Judge H. W. Paton, Sir Philip Morris, Vice-Chancellor of Bristol University, Mr. T. G. Lund, secretary of The Law Society, Mr. Norman J. Skelhorn, Q.C., and the presidents and chairmen of many kindred societies.

At the annual dinner of the INCORPORATED LAW SOCIETY OF PLYMOUTH, held on Saturday, 6th November, the following were among those present: Lord Justice Denning, a former Recorder of Plymouth; the Bishop of Exeter, Dr. R. C. Mortimer; Mr. Isaac Foot, the chairman of the Cornwall Court of Quarter Sessions; Mr. J. H. Addleshaw and Mr. W. R. Williams, the president and hon. secretary of Somerset Law Society; and Mr. J. H. Petybridge and Mr. J. A. N. Ralph, president and hon. secretary of Cornwall Law Society.

MIDDLE TEMPLE GRAND DAY

The following guests of Domus were present on 25th November at Grand Day dinner in Middle Temple Hall: The Lord Chancellor, the Portuguese Ambassador, Viscount Woolton, Lord Merriman, Lord Cohen, Major the Hon. Gwilym Lloyd-George, M.P., Mr. Harold Macmillan, M.P., the Master of the Rolls, Sir Reginald Manningham-Buller, Q.C., M.P., Sir Henry Dale, Sir John Cockcroft, Sir Harold Spencer Jones, Sir Harry Platt, Sir John Braithwaite, Sir Edward Maufe, Sir Arthur Bryant, Mr. Frank Salisbury, Mr. Walter Godfrey, Professor W. E. le Gros Clark, Mr. F. H. Jessop, Mr. Donald V. House, Prebendary A. J. Macdonald, Mr. Martin Price, Mr. Peter W. Price. The Master Treasurer, Mr. Wilfrid Price, was present with Masters of the Bench.

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